

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF	)	
	)	
K. D. W. (minor)	)	OAH No. 09-0432-PFD
	)	Agency No. 2008-050-4725
<u>2008 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

L. K. timely applied for a 2008 Permanent Fund dividend on behalf of her son K. The Permanent Fund Dividend Division (“division”) determined that he was not eligible, and it denied the application initially and at the informal appeal level. Ms. K. requested a formal hearing by correspondence, but requested that D. W., K.’s father, be substituted in her place.<sup>1</sup> A telephonic formal hearing was held on November 10, 2009. Mr. W. appeared on K.’s behalf and Bethany Chase represented the division. Ms. K. did not participate.<sup>2</sup> The division’s decision is affirmed.

**II. Facts**

K. was born in Alaska.<sup>3</sup> After his parents separated, his father, D. W., moved to Seattle, Washington, and K. remained in Alaska with Ms. K. In 2007, she began to have problems that were not specifically identified during the hearing, but her difficulties were ample enough that she could not remain K.’s custodial parent. Also, to some extent, K. was having problems, as well, such as discipline problems in school. Together, Ms. K. and Mr. W. decided that K. would go live with Mr. W. for an unspecified period of time.

On July 22, 2007, K. flew to Seattle and joined his father there. Mr. W. enrolled him in school for the 2007-2008 school year. K. remained in Washington until January 18, 2009, at which time he returned to his mother in Alaska. He was here until August 3, 2009, when he once again flew to Washington to be with his father. As of the date of the hearing, K. was still there.

---

<sup>1</sup> Her request indicated she wanted Mr. W. to be K.’s sponsor but it was clear from her statement that Ms. K. wanted Mr. W. to appear at the hearing on K.’s behalf.

<sup>2</sup> Mr. W. was given the opportunity to call Ms. K. as a witness but he declined.

<sup>3</sup> This appeal pertains to K. only, but according to Mr. W. and the division, the facts also apply to his older brother, I., whose appeal is being processed separately from K.’s.

Ms. K. timely applied for K.'s 2008 PFD. In the application, she indicated that he was not in Alaska at the time of the application because he had "moved."<sup>4</sup> K.'s application was denied and in the request for informal appeal, Ms. K. wrote that he was not gone longer than 180 days in 2007, he was enrolled in school in Seattle and she was holding a ticket for him to "move back permanently. . . ."<sup>5</sup> The division affirmed its earlier denial of K.'s application. In filing her appeal, Ms. K. wrote that K. did not move to Seattle, his transcripts were transferred and he was going to school there.<sup>6</sup>

### **III. Discussion**

In order to qualify for a permanent fund dividend, a person must be an Alaska resident all through the qualifying year and at the date of application.<sup>7</sup> A person who leaves Alaska is no longer an Alaska resident if the person is absent under circumstance that are inconsistent with the intent to return to Alaska to remain indefinitely and make a home.<sup>8</sup> At a formal hearing, the person requesting the hearing has the burden of proving that the division's decision was incorrect.<sup>9</sup>

The division asserts that K.'s Alaska residency was severed when his parents moved him to Washington State to live with his father. Neither Ms. K. nor Mr. W. has presented any evidence to contradict this assertion. K.'s parents offer different interpretations of the division's statutes and regulations, but they have not presented evidence that proves by a preponderance of the evidence that K. remained an Alaska resident after going to Washington in 2007. Because of the fact that both Ms. K. and K. were having problems, Ms. K. and Mr. W. decided that K. would go live in Seattle. There was no custody order in place at the time, so going to be with his father was essentially a change of custody for K., who was in Washington until January 18, 2009. He was back in Alaska for just over six months, then on August 2, 2009, he returned to Seattle, where he remains at the present time. Ms. K.'s stated reason – that K. had moved – was correct.

K.'s parents cannot now change his reason for going to Washington to an educational absence. In order to qualify for a dividend, the applicant must have been physically present in

---

<sup>4</sup> Exh. 1 at pg. 2.

<sup>5</sup> Exh. 3 at pg. 2.

<sup>6</sup> Exh. 5 at pg. 2.

<sup>7</sup> AS 43.23.005(a)(2)-(3).

<sup>8</sup> AS 43.23.095(7); AS 01.10.055(c).

<sup>9</sup> 15 AAC 05.030(h).

Alaska for the entire qualifying year, or only absent as permitted by AS 43.23.008.<sup>10</sup> AS 43.23.008(a)(1) permits an absence for full-time attendance at a secondary or post-secondary school, but not for primary school. Postsecondary education includes grades 7-12.<sup>11</sup> Because K. was not yet in the 7<sup>th</sup> grade during the qualifying year, his absence was not allowable according to the plain language of the statute.

Under these circumstances, Ms. K. and Mr. W. have failed to prove that the division's decision was in error. Their evidence is insufficient to disprove the division's conclusion that K. moved and is not eligible for a 2008 PFD.

#### **IV. Conclusion**

Based on a preponderance of the evidence, K. D. W. is not eligible for a 2008 PFD. The decision of the Permanent Fund Dividend Division to deny his application for a 2008 permanent fund dividend shall be **AFFIRMED**.

DATED this 4th day of December, 2009.

By: Signed  
Kay L. Howard  
Administrative Law Judge

#### **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of January, 2010.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to technical standards for publication.]

---

<sup>10</sup> AS 43.23.005(a)(6).

<sup>11</sup> 15 AAC 23.163(c)(1).